

STATE OF MICHIGAN
COURT OF APPEALS

MICHELE DEGREGORIO,

Plaintiff-Cross-Defendant-
Appellant,

v

C & C CONSTRUCTION, and DOMINIC J.
CRISTINI,

Defendants-Appellees,

and

J.G.E. & ASSOCIATES,

Defendant-Cross-Plaintiff-Appellee,

and

REPUBLIC BANK, COMERICA BANK, ZOLLA
INCORPORATED, and RICHARD M. BARROW,

Defendants.

UNPUBLISHED

May 20, 2003

No. 238429

Oakland Circuit Court

LC No. 2000-025049-CH

Before: Sawyer, P.J., and Murphy and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment granting summary disposition in favor of defendants C&C Construction (C&C), Dominic J. Cristini (Cristini),¹ and J.G.E. & Associates (JGE), which was entered pursuant to MCR 2.116(C)(10). This real property action involves issues concerning the validity, priority, and extinguishment of property interests and liens, and requires us to interpret various statutory provisions, including portions of the Construction Lien Act, MCL 570.1101 *et seq.* We reverse and remand for entry of judgment in favor of plaintiff.

¹ C&C is Cristini's construction company.

I. BASIC FACTS and PROCEDURAL HISTORY

The quiet title action filed by plaintiff in the trial court concerns real property located in Oakland County (hereinafter referred to as the “property”).² We shall begin with a review of the relevant history of the property that is essentially uncontested in this action.

Pursuant to a quitclaim deed dated October 6, 1997, Francine G. McRipley conveyed the property to Richard M. Barrow. Barrow obtained a loan from Pines Mortgage Corporation (Pines) in the amount of \$500,000 that was secured by a mortgage on the property, which mortgage was dated September 25, 1997, and recorded October 6, 1997. Pines assigned the mortgage to Randall and Hillary Shaw (Shaws) pursuant to a document titled corporate assignment of real estate mortgage dated September 25, 1997, and recorded November 4, 1997.

The Shaws obtained a loan from Comerica Bank (Comerica) in the amount of \$450,000, and as security for the loan, the Shaws assigned the mortgage on the property to Comerica pursuant to an assignment of note and mortgage dated September 25, 1997, and recorded October 17, 1997. Barrow defaulted on his loan, and the Shaws, pursuant to a power of sale provision, foreclosed the mortgage on the property, obtaining a sheriff’s deed on mortgage sale dated April 7, 1998, and recorded the same day.³ The six-month redemption period expired on October 7, 1998, with no redemption occurring, thereby making operative the sheriff’s deed. On November 2, 1999, the Shaws conveyed the property to plaintiff by a warranty deed for \$560,000; the deed was recorded on December 9, 1999.⁴

Backtracking slightly, in June 1997, Barrow, pursuant to an oral agreement, hired C&C/Cristini to make improvements to the property, and actual physical improvements were first made in June 1997.⁵ This agreement was reduced to writing on September 27, 1997. There is apparently no dispute that Barrow and C&C/Cristini had some form of contract for improvements to the property. There is also apparently no dispute that under the contract, C&C/Cristini was to receive payment of \$350,000, of which only \$50,000 was paid. Plaintiff makes no claim that C&C/Cristini failed to make improvements to the property under the contract. According to the subsequently recorded claim of lien, October 2, 1998, was the last day that labor and materials were provided on the project. This was five days before the redemption period expired in the Shaws’ foreclosure action against Barrow.⁶ On October 22,

² A residential structure is located on the property.

³ The Shaws purchased the property at the foreclosure sale for \$548,119.

⁴ It appears that the mortgage assigned to Comerica was paid off upon closing, and that plaintiff obtained a \$500,000 loan to purchase the property.

⁵ These claims were made by Cristini in an affidavit and a deposition. In his appellate brief, plaintiff references Cristini’s claims as “allegations;” however, plaintiff does not directly challenge the truthfulness of the claims. We do note that the claim of lien subsequently filed by C&C/Cristini indicates that labor and materials were first provided on the improvement project on October 2, 1997.

⁶ Barrow had also given a mortgage on the property to defendant Republic Bank (Republic), recorded December 22, 1997, to secure a \$50,000 loan. Additionally, Barrow had apparently given a mortgage on the property to defendant Zolla Incorporated (Zolla), recorded September
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1998, defendants C&C and Cristini recorded a claim of lien and claim of interest with respect to the property and the improvements made thereon. Almost a year later, on October 21, 1999, and about two weeks before the property was conveyed to plaintiff, C&C filed a complaint in circuit court seeking, in part, to foreclose on the construction lien, and naming as defendants, Barrow, Republic, and Super 1, Inc.,⁷ but not the Shaws. Plaintiff was also never added as a party in the lien foreclosure action. Not until January 19, 2000, after the sale to plaintiff, was a notice of lis pendens recorded in regards to the circuit court lien foreclosure action.⁸

On February 28, 2000, Cristini executed an assignment of claim of interest that purportedly assigned to defendant JGE, the claim of interest, the notice of lis pendens, a judgment of claim of interest dated January 21, 2000, and the complaint and demand for jury trial dated October 21, 1999.

On March 1, 2000, an order for foreclosure sale was entered in the lien foreclosure action initiated by C&C. On May 9, 2000, a clerk's deed on foreclosure of real estate was issued to C&C, and the deed was recorded on May 16, 2000. C&C purchased the property at the foreclosure sale for \$336,750. The redemption period on the clerk's deed set an expiration date of August 9, 2000. Plaintiff's verified complaint in the case sub judice was filed on August 3, 2000.

Plaintiff's complaint contained four counts, the first of which was a claim to quiet title. With respect to that claim, plaintiff asserted that any interest of Republic and Zolla was extinguished when the Shaws foreclosed on the property and the redemption period expired, that C&C's foreclosure action failed to name plaintiff or the Shaws as required by MCL 570.1117(4), that C&C failed to file, record, or serve a timely notice of lis pendens pursuant to MCL 600.2701, thereby failing to provide notice to plaintiff of the pendency of the foreclosure suit, and that plaintiff was a bona fide purchaser for value of the property, and thus under MCL 565.29, any lien, foreclosure action, and clerk's deed were void as to plaintiff. Further, plaintiff alleged that, pursuant to MCL 570.1117(1), C&C had one year from the recording of its claim of lien to file a lawsuit to enforce the lien but failed to properly do so, thus the action was time-barred, and that JGE acquired no legitimate interest in the property because C&C/Cristini had no legitimate interest in the property. For these reasons, plaintiff requested a judgment quieting title in his favor and extinguishing any other interests of defendants or voiding those interests as against plaintiff.

Count II of plaintiff's complaint was against the Shaws and was predicated on breach of warranty arising out of the warranty deed and the numerous encumbrances on the property. Count III of the complaint concerned Comerica and alleged that when plaintiff closed on the sale

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30, 1998, to secure a \$35,000 loan.

⁷ Super 1, Inc., was Barrow's company.

⁸ C&C/Cristini's attorney filed an affidavit asserting that for reasons unknown, the notice of lis pendens was not timely recorded by the register of deeds despite efforts by the law office to have it recorded promptly. The affidavit indicates that the notice of lis pendens was filed as an attachment to the complaint.

of the property on November 2, 1999, Comerica's mortgage was paid in full, yet it failed to discharge the mortgage within ninety days as required by MCL 565.41. The final count in the complaint was a request for injunctive relief seeking to prevent any conveyance of the property and extending the redemption period that was about to expire. On August 3, 2000, a temporary restraining order and order to show cause were entered by the trial court. Subsequently, on October 3, 2000, a preliminary injunction was entered in favor of plaintiff.

JGE filed a counterclaim against plaintiff, alleging, in count I, superior title pursuant to a valid construction lien for improvements that were commenced in June 1997 prior to any other relevant interests or liens arising relative to the property. Count II was a claim for unjust enrichment, in which JGE sought recovery in the amount of \$300,000.

C&C, Cristini, and JGE filed motions for summary disposition pursuant to MCR 2.116(C)(10), arguing that there was no genuine issue of material fact that the construction lien was superior to any interest that plaintiff had in the property.

II. TRIAL COURT'S RULING

The trial court granted defendants'⁹ motion for summary disposition pursuant to MCR 2.116(C)(10). The trial court ruled that under the Construction Lien Act, and in particular MCL 570.1119(3), C&C's construction lien had priority over all other interests or liens because the first actual improvements made to the property occurred before any other relevant liens or interests arose. The trial court rejected an argument made by plaintiff that his interest was superior because of the purchase money mortgage interest held by plaintiff's predecessor in title, the Shaws, which interest is always superior to any lien, including a construction lien. The trial court found that plaintiff's argument, if successful, would result in the complete abrogation of the Construction Lien Act. The court further rejected plaintiff's arguments that the construction lien was invalid because an oral agreement for improvements was entered into as opposed to a written contract, and because the subsequent written agreement for improvements did not contain required statutory language in regards to licenses. The trial court ruled that such defects were not fatal to a claim of lien. Additionally, the court ruled that because a foreclosure judgment had been entered in C&C's lien foreclosure action, the appropriate remedy was to seek an independent action for relief from judgment, which had not been done.

The trial court next rejected plaintiff's argument that the construction lien was invalid because Cristini was not a licensed builder as required by MCL 339.2412. The trial court ruled that the Construction Lien Act did not require defendants to be licensed in order to maintain an action to enforce a lien based on the type of work involved in the improvement project. Next, the trial court rejected plaintiff's argument that the lien foreclosure action by C&C was invalid as C&C was never a corporation as claimed in the suit. The trial court ruled that plaintiff did not provide any legal support for his position. Finally, the trial court rejected plaintiff's argument that the foreclosure judgment was invalid because defendants never filed and recorded a notice

⁹ Reference to "defendants" in this opinion relates to C&C, Cristini, and JGE, who are the only parties, besides plaintiff, involved in this appeal.

of lis pendens when C&C's lien foreclosure action was initiated. The court ruled that case law held that such a failure does not invalidate a timely filed foreclosure action.

Plaintiff filed a motion for reconsideration pursuant to MCR 2.119(F), arguing that the trial court failed to consider his argument that C&C's lien foreclosure action was flawed because the Shaws, who owned the property at the time, were not named as parties, and his argument that the Shaws' foreclosure action with respect to Barrow extinguished any lien claim by defendants, where the claim of lien had yet to be prepared and recorded. The trial court rejected these arguments ruling that although the Construction Lien Act requires that all persons having an interest in the property be named in a lien foreclosure action, there is no specified remedy when the lien holder fails to do so. The court found, in liberally construing the Construction Lien Act, that the failure to name the Shaws or plaintiff in the lien foreclosure action was not fatal because plaintiff was put on notice of the lien matter, where it was recorded prior to his purchase of the property. Next, the trial court ruled that the Shaws' foreclosure action against Barrow did not extinguish C&C's lien claim because despite the claim of lien being recorded after the redemption period expired in the Shaws' action, the improvements made to the property occurred before the Shaws' foreclosure action.

A final judgment was subsequently entered by the trial court wherein the court declared that C&C's, Cristini's, and JGE's interests were superior to that of plaintiff's interest; therefore, plaintiff's case was dismissed in its entirety, and judgment was awarded in favor of JGE pursuant to count I of its counterclaim. Count II of JGE's counterclaim was dismissed with prejudice. A default judgment was entered against Republic, thereby terminating any interest it may have had in the property. Defendants Zolla, Comerica, and Barrow were dismissed from the case. The preliminary injunction was terminated.

III. APPELLATE ARGUMENTS and ANALYSIS

A. Standard of Review

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Koenig v City of South Haven*, 460 Mich 667, 674; 597 NW2d 99 (1999). Issues of law, such as statutory construction, are also reviewed de novo. *In re RFF*, 242 Mich App 188, 198; 617 NW2d 745 (2000).¹⁰

¹⁰ The trial court granted summary disposition pursuant to MCR 2.116(C)(10). MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. Our Supreme Court has ruled that a trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). In addition, all affidavits, pleadings, depositions, admissions, and other documentary evidence filed in the action or submitted by the parties are viewed in a light most favorable to the party opposing the motion. *Id.* Where the burden of proof on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in the pleadings, but must go beyond the
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B. Construction Lien Act – General Overview

This case requires review of several provisions contained in the Construction Lien Act, MCL 570.1101 *et seq.* The Construction Lien Act constitutes remedial legislation that sets forth a comprehensive scheme aimed at securing payment for the individuals and businesses that perform construction work through equitable actions. MCL 570.1118(1); *Solution Source, Inc v LPR Assoc Ltd Partnership*, 252 Mich App 368, 373; 652 NW2d 474 (2002). The Construction Lien Act is designed to protect the right of all subcontractors and contractors to receive payments for labor and material, and it is to be liberally construed to secure the beneficial results, intents, and purposes of the act. MCL 570.1302; *Pitsch v ESE Michigan, Inc*, 233 Mich App 578, 602; 593 NW2d 565 (1999).

The Construction Lien Act specifically provides:

A construction lien arising under this act shall take priority over all other interests, liens, or encumbrances which may attach to the building, structure, or improvement, or upon the real property on which the building, structure, or improvement is erected when the other interests, liens, or encumbrances are recorded subsequent to the first actual physical improvement. [MCL 570.1119(3).]

C. Purchase Money Mortgage

Plaintiff argues that the trial court erred in finding C&C's, and thus JGE's, interest in the property to be superior to plaintiff's interest because a purchase money mortgage is always superior to an earlier recorded construction lien. Plaintiff maintains that assuming that defendants had any lien rights, those rights were inferior to the purchase money mortgage interest held by plaintiff's predecessor in title, the Shaws. Plaintiff relies on *Graves v American Acceptance Mortgage Corp*, 246 Mich App 1, 5; 630 NW2d 383 (2001), wherein this Court stated that the holder of an interest in real estate who first records his interest generally has priority over subsequent purchasers, MCL 565.25(4) and MCL 565.29; however, "[i]t is well established . . . that a promptly recorded purchase money mortgage takes priority over earlier creditors' interests, notwithstanding that the earlier interests were duly recorded."

The Michigan Supreme Court reversed the decision in *Graves*, and held that "our Legislature has decided to afford preference to the first-in-time recorded encumbrance without giving any special preference to purchase money mortgages." *Graves v American Acceptance Mortgage Corp*, 467 Mich 308, 313; 652 NW2d 221 (2002). However, the Supreme Court has very recently vacated its decision in *Graves*, granted leave to appeal,¹¹ and it will entertain

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pleadings to set forth specific facts showing that a genuine issue of material fact exists. *Id.* Where the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id.* at 363.

¹¹ The per curiam opinion of the Supreme Court at 467 Mich 308 was issued in lieu of granting
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amicus briefs. 467 Mich 1232. Until our Supreme Court issues a new ruling, this Court's decision in *Graves* remains the law. The Court of Appeals decision in *Graves* appears favorable to plaintiff's position; however, in light of some uncertainty in the law created by the Supreme Court's actions, and because we find in plaintiff's favor on other grounds, we decline to make a definitive ruling on this issue.

D. C&C's Corporate Status

Plaintiff next argues that C&C is not a corporation but just an assumed business name, yet it pursued the lien foreclosure action identified as a corporation; therefore, the judgment entered in the lien action was in favor of a non-existent entity and thus void. Plaintiff's appellate brief fails to adequately address the issue and fails to cite any relevant supporting authority for the proposition that the lien should be disregarded under the circumstances. Thus, plaintiff has effectively waived this issue. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998).

E. Contractor Licensing Issue

Plaintiff next argues that Cristini was not a licensed contractor as required by MCL 339.2412; therefore, the claim of lien and the lien foreclosure action were invalid.

MCL 339.2412 provides in relevant part:

(1) A person or qualifying officer for a corporation or member of a residential builder or residential maintenance and alteration contractor shall not bring or maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article during the performance of the act or contract.

In *Stokes v Millen Roofing Co*, 466 Mich 660, 668-669; 649 NW2d 371 (2002), our Supreme Court definitively ruled that an unlicensed contractor, who is required to be licensed under the law, cannot acquire and enforce a construction lien under the Construction Lien Act in light of the language in MCL 570.1114¹² requiring such a license and MCL 339.2412.

The question that arises here is whether a license or licenses were required, and if required, whether licenses were actually held by those making the improvements to the property. MCL 339.2412 and MCL 570.1114 mandate licensure but only to the extent that a license is

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leave.

¹² MCL 570.1114 requires contractor licensure information to be included in the mandatory written contract for improvements. See discussion *infra*.

required under the law. Defendants argue that a substantial portion of the work performed on the property by Cristini involved landscaping, tree-trimming, tree removal, rock formation, carpeting, and asphalt work, all of which do not require a license. Moreover, defendants maintain that to the extent that licenses were required for work such as carpentry, plumbing, window installation, and masonry, the work was performed by duly licensed subcontractors. The full extent of plaintiff's argument below and on appeal is that Cristini and C&C were not licensed as required by MCL 339.2412; there is no effort to address defendants' position or the trial court's ruling, which provided that actions such as excavating, filling, ornamenting, landscaping, and paving can give rise to a construction lien, MCL 570.1104(7), yet a license is not required. MCL 339.2412 does not address the situations and circumstances under which a person must be licensed. C&C and Cristini may very well have been required to be licensed in order to make the improvements,¹³ or some of the improvements; however, without the assistance of any minimally informative brief or citation to authority by plaintiff, we are not in a position to say that the trial court erred in its ruling on this particular issue.¹⁴ However, the issue of licensing, in the context of the contract between C&C/Cristini and Barrow, arises again in the next argument that we address.

F. Compliance Issues Under MCL 570.1114

Plaintiff next argues that the trial court erred in finding defendants' interest in the property to be superior to plaintiff's interest, where C&C/Cristini failed to comply with MCL 570.1114, thereby making its lien invalid. MCL 570.1114 provides:

A contractor shall not have a right to a construction lien upon the interest of any owner or lessee in a residential structure unless the contractor has provided an improvement to the residential structure pursuant to a written contract between the owner or lessee and the contractor and any amendments or additions to the contract also shall be in writing. The contract required by this section *shall* contain a statement, in type no smaller than that of the body of the contract, setting forth all of the following:

(a) That a residential builder or a residential maintenance and alteration contractor is required to be licensed under article 24 of Act 299 of the Public Acts of 1980, as amended, being sections 339.2401 to 339.2412 of the Michigan

¹³ The written contract between C&C/Cristini and Barrow, along with the claim of lien, indicates that the structure on the property was rehabbed and renovated. This would possibly suggest the need for a license. See MCL 339.2401(b).

¹⁴ As our Supreme Court stated in *Mudge*, *supra* at 105, quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959):

“It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow.”

Compiled Laws. That an electrician is required to be licensed That a plumber is required to be licensed

(b) If the contractor is required to be licensed to provide the contracted improvement, that the contractor is so licensed.

(c) If a license is required, the contractor's license number.

Plaintiff asserts that labor and materials were expended upon an oral contract; therefore a construction lien could not arise. Additionally, plaintiff maintains that the subsequent written agreement entered into between C&C/Cristini and Barrow failed to contain the required language regarding licensure, MCL 570.1114(a)-(c). It is beyond dispute that the written contract failed to contain the required licensure language. The written contract contains no reference whatsoever to licenses or liens. Moreover, the contract provided that "[a]ll work performed will be by verbal agreements." MCL 570.1114 clearly denies a contractor the right to a construction lien unless a written contract in compliance with the statute is executed. In *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002), our Supreme Court, reviewing principles of statutory construction, stated that "[i]f [a] statute's language is clear and unambiguous, then we assume that the Legislature intended its plain meaning and the statute is enforced as written." Here, the statute mandates a ruling, and we so rule, that no valid lien attached under the factual circumstances of the case.

This result appears unfair and inequitable to defendants, but as noted by our Supreme Court in *Stokes*, *supra* at 671-672:

Courts must be careful not to usurp the Legislative role under the guise of equity because a statutory penalty is excessively punitive. As the Court of Appeals stated:

"Regardless of how unjust the statutory penalty might seem to this Court, it is not our place to create an equitable remedy for a hardship created by an unambiguous, validly enacted, legislative decree." [Citation omitted.]

G. Lien Foreclosure Action – Naming Parties, Limitation Period, and Notice of Lis Pendens

We do not rest our opinion solely on the issue of the written contract's lack of compliance with the Construction Lien Act, but also on C&C's failure to name the Shaws in the lien foreclosure action. Plaintiff argues that C&C's lien foreclosure action was flawed because the Shaws, who owned the property at the time the action was commenced in October 1999, were not named as parties, nor was plaintiff added as a party after he obtained an ownership interest in November 1999. Plaintiff maintains that the title documents showed that the Shaws held an ownership interest in the property at the time the suit was filed. Defendants argue that they relied in good faith on a title commitment that did not reveal the Shaws' interest, and regardless, the failure to name the Shaws in the lien foreclosure action has no impact on the ultimate priority of interests.

Plaintiff relies on MCL 570.1117(4) and MCR 3.411. MCL 570.1117(4) provides that "[e]ach person who, at the time of filing the action, has an interest in the real property involved

in the action which would be divested or otherwise impaired by the foreclosure of the lien, shall be made a party to the action.” Further, MCR 3.411 provides in relevant part:

(A) This rule applies to actions to determine interests in land under MCL 600.2932¹⁵

. . .

(H) The judgment determining a claim to title, equitable title, right to possession, or other interests in lands under this rule, determines only the rights and interests of the known and unknown persons who are parties to the action, and of persons claiming through those parties by title accruing after the commencement of the action.

There is apparently no dispute that at the time C&C initiated the lien foreclosure action on October 21, 1999, the Shaws were the owners of record with respect to the property, having completed in full the foreclosure proceedings against Barrow. We find that the Construction Lien Act, and specifically MCL 570.1117(4), required C&C to name the Shaws as a party to the lien foreclosure action. The statute does not provide a particular remedy where a necessary party is not joined; however, it is clear that the failure to name the Shaws resulted in a subsequent foreclosure judgment that could not effect or divest the Shaws’ or plaintiff’s interest in the property. MCR 3.411(H). Even if we assumed that the claim of lien was valid and attached to the property, the court action to foreclose on the lien was not effective with respect to the real interests of unnamed parties that should have been named. This results in extinguishing the claim of lien because any future foreclosure action would be beyond the one-year limitation period under the Construction Lien Act.

MCL 570.1117 provides in pertinent part:

(1) Proceedings for the enforcement of a construction lien and the foreclosure of any interests subject to the construction lien shall not be brought later than 1 year after the date the claim of lien was recorded.

The failure to bring a foreclosure action within the one-year period effectively discharges and renders ineffective the claim of lien. MCL 570.1128; MCL 570.1117(1).

¹⁵ MCL 600.2932 provides, in pertinent part:

(1) Any person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or right to possession of land, may bring an action in the circuit courts against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not.

We also note, with regards to defendants' argument that plaintiff had record notice of the claim of lien when he purchased the property, that plaintiff did not have record notice that a foreclosure action had commenced approximately two weeks earlier. MCL 570.1117(2) provides that "[a]t the time of commencing an action for the enforcement of a construction lien through foreclosure, the plaintiff shall record a notice of lis pendens with respect to the action in the office of the register of deeds for the county in which the real property involved in the action is located." MCL 600.2701 provides in part:

(1) To render the filing of a complaint constructive notice to a purchaser of any real estate, the plaintiff shall file for record, with the register of deeds of the county in which the lands to be affected by such constructive notice are situated, a notice of the pendency of such action, setting forth the title of the cause, and the general object thereof, together with a description of the lands to be affected thereby.

There is no dispute that a notice of lis pendens was not recorded until several months after the lien foreclosure action was initiated and after plaintiff purchased the property. This was yet another failure by C&C/Cristini to comply with the Construction Lien Act.

Reversed and remanded for entry of judgment in plaintiff's favor consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Kirsten Frank Kelly